

on or after the effective date of this regulation; and

(ii) Directly related to setting mandatory terms and conditions for a proposed project pursuant to section 30(c) of the Federal Power Act.

(2) *Cost statement* means a statement of the total costs for which a fish and wildlife agency requests reimbursement including an itemized schedule of costs including, but not limited to, costs of fieldwork and testing, contract costs, travel costs, personnel costs, and administrative and overhead costs.

(3) *Mandatory terms and conditions* means terms and conditions of a license or exemption that a fish and wildlife agency determines are appropriate to prevent loss of, or damage to, fish and wildlife resources pursuant to section 30(c) of the Federal Power Act.

(4) *New dam or diversion license applicant* means an applicant for a license for a project that would impound or divert the water of a natural watercourse by means of a new dam or diversion, as defined in section 210(k) of the Public Utility Regulatory Policies Act of 1978, as amended.

(5) *PURPA benefits* means benefits under section 210 of the Public Utility Regulatory Policies Act of 1978, as amended.

(6) *Section 30(c) application* means an application for an exemption from licensing or a new dam or diversion license application seeking PURPA benefits.

(c) *Applicability*. Except as provided in paragraph (d) of this section, this subpart applies to:

(1) Any application for exemption filed on or after the effective date of these regulations for costs incurred by fish and wildlife agencies after the effective date of these regulations;

(2) Any new dam or diversion license application seeking PURPA benefits filed on or after April 16, 1988;

(3) Any new dam or diversion license application seeking PURPA benefits filed after the effective date of this regulation, but before April 16, 1988, if the applicant fails to demonstrate in a monetary resources petition filed with the Commission pursuant to § 292.208 of this chapter that, before October 16, 1986, it had committed substantial monetary resources directly related to

the development of the proposed project and to the diligent and timely completion of all requirements of the Commission for filing an acceptable application; and

(4) Any new dam or diversion license application seeking PURPA benefits filed after the effective date of this regulation, if the application is not accepted for filing before October 16, 1989.

(d) *Exceptions*. (1) This subpart does not apply to any new dam or diversion license application seeking PURPA benefits if the moratorium described in section 8(e) of ECPA is in effect. The moratorium will end at the expiration of the first full session of Congress following the session during which the Commission reports to Congress on the results of the study required under section 8(d) of ECPA.

(2) This subpart does not apply to any new dam or diversion license application seeking PURPA benefits for a project located at a Government dam, as defined in section 3(10) of the Federal Power Act, at which non-Federal hydroelectric development is permissible.

§ 4.301 Notice to fish and wildlife agencies and estimation of fees prior to filing.

(a) *Notice to agencies*—(1) *New dam or diversion license applicants*. During the initial stage or pre-filing agency consultation under § 4.38(b)(1), a prospective new dam or diversion license applicant must inform each fish and wildlife agency consulted in writing with a copy to the Commission whether it will seek PURPA benefits.

(2) *Exemption applicants*. During the initial stage of pre-filing agency consultation under § 4.38(b)(1), a prospective exemption applicant must notify each fish and wildlife agency consulted that it will seek an exemption from licensing.

(b) *Estimate of fees*. Within the comment period provided in § 4.38(b)(2)(iv), a fish and wildlife agency must provide a prospective section 30(c) applicant with a reasonable estimate of the total costs the agency anticipates it will incur to set mandatory terms and conditions for the proposed project. An agency may provide an applicant with

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an updated estimate as it deems necessary. If an agency believes that its most recent estimate will be exceeded by more than 25 percent, it must supply the prospective applicant or applicant with a new estimate and submit a copy to the Commission.

§ 4.302 Fees at filing.

(a) *Filing requirement.* A section 30(c) application must be accompanied by a fee or a bond, together with copies of the most recent cost estimates provided by fish and wildlife agencies pursuant to § 4.301(b).

(b) *Amount.* The fee required under paragraph (a) of this section must be in an amount equal to 50 percent of the most recent cost estimates provided by fish and wildlife agencies pursuant to § 4.301(b). In lieu of this amount, an applicant may provide an unlimited term surety bond from a company on the Department of Treasury's list of companies certified to write surety bonds. Applicants bonded by a company whose certification by the Department of the Treasury lapses must provide evidence of purchase of another bond from a certified company. A bond must be for an amount no less than 100 percent of the agencies' most recent cost estimates pursuant to § 4.301(b).

(c) *Failure to file.* The Commission will reject a section 30(c) application if the applicant fails to comply with the provisions of paragraphs (a) and (b) of this section.

§ 4.303 Post-filing procedures.

(a) *Submission of cost statement—(1) Accepted applications.* Within 60 days after the last date for filing mandatory terms and conditions pursuant to § 4.32(c)(4) for a new dam or diversion license application seeking PURPA benefits, § 4.93(b) for an application for exemption of a small conduit hydroelectric facility, or § 4.105(b)(1) for an application for case-specific exemption of a small hydroelectric power project, a fish and wildlife agency must file with the Commission a cost statement of the reasonable costs the agency incurred in setting mandatory terms and conditions for the proposed project. An agency may request, in writing, along with any supporting documentation an extension of this 60-day period.

(2) *Rejected, withdrawn or dismissed applications.* The Director of the Office of Hydropower Licensing (Director) will, by letter, notify each fish and wildlife agency if a section 30(c) application is rejected, withdrawn or dismissed. Within 60 days from the date of notification, a fish and wildlife agency must file with the Commission a cost statement of the reasonable costs the agency incurred prior to the date the application was rejected, withdrawn, or dismissed. An agency may submit a written request for an extension of this 60-day period along with any supporting documentation.

(b) If an agency has not submitted a cost statement or extension request within the time provided in paragraph (a)(2) of this section, it waives its right to receive fees for that project pursuant to this subpart.

(c) *Billing.* After the Commission receives a cost statement from all fish and wildlife agencies as required by paragraph (a) of this section, the Commission will bill the section 30(c) applicant. The bill will show:

(1) The cost statement submitted to the Commission by each fish and wildlife agency;

(2) Any amounts already paid by the applicant pursuant to § 4.302; and

(3)(i) The amount due, if the amount already paid by the applicant pursuant to § 4.302 is less than the total of all the cost statements; or

(ii) The amount to be refunded to the applicant, if the amount already paid by the applicant pursuant to § 4.302 is more than the total of all the cost statements.

(d) Within 45 days from the date of a bill issued under paragraph (b) of this section, a section 30(c) applicant must pay in full to the Commission any remaining amounts due on the cost statements regardless of whether any of these amounts are in dispute.

(e) *Dispute procedures—(1) When to dispute.* Any dispute regarding the reasonableness of any fish and wildlife agency cost statement must be made within 45 days from the date of a bill issued under paragraph (b) of this section.

(2) *Assessment of disputed cost statements.* The burden of showing that an agency's cost statement is unreasonable is on the applicant. However, a